

KEN CLEMENTS,

Petitioner

\* BEFORE THE ZONING BOARD

\* OF HOWARD COUNTY

\* Zoning Board Case No. 1069M

\* \* \* \* \*

### **DECISION AND ORDER**

On January 9, 2008, the Zoning Board of Howard County, Maryland considered the petition of Ken Clements for an amendment to the permitted uses on the Preliminary Development Plan ("PDP") for the 13-acre BR-zoned subject property which is located on the east side of MD 27 south of I-70 and approximately 170 feet south of Penn Shop Road and described as Tax Map 6, Grid 2, Parcel 106.

The notice of the hearing was advertised, the subject property was posted, and the adjoining property owners were mailed notice of the hearing, as evidenced by the certificates of posting, advertising and mailing to adjoining property owners, all of which were made part of the record of the hearing. The Department of Planning and Zoning recommended approval of adding mulch manufacturing and the processing and storage of agricultural products as additional uses on the PDP, and recommended approval of adding the contractor's office(s) and outdoor storage facility as uses on the PDP provided that these uses be limited to an area less than ten acres, that they be clearly delineated of the PDP and that they meet the requirements of Section 103.A.88 of the Howard County Zoning Regulations. The Planning Board recommended approval of adding mulch manufacturing and the processing and storage of agricultural products as additional uses on the PDP, and also recommended approval of the landscape contractor's office and indoor

and outdoor storage facility if it was determined that such uses were legally permitted under the Zoning Regulations.

The petitioner was represented by Sang Oh, Esq. No one appeared in opposition to the petition.

After careful evaluation of all the information presented, the Board makes the following findings of fact and conclusions of law:

#### FINDINGS OF FACT

1. In Zoning Board Case 1063M, a copy of which was made part of the record as an additional official document, the Zoning Board granted rezoning of the 13-acre subject property from the RC-DEO (Rural Conservation) District to the BR (Business: Rural) District. As part of that grant of rezoning the Zoning Board approved the use of a sawmill use on the subject property and uses accessory to the sawmill use. In this case, ZB Case 1069M, the Petitioner requests Zoning Board approval on the PDP of the additional uses of top soil and mulch manufacturing, including storage areas, a contractor's office and indoor or outdoor storage area, storage areas for agricultural products and equipment storage area.

2. Petitioner's proposed amended PDP shows specific locations for the proposed additional uses on the subject property. Mr. Kenneth Clements testified that the storage area for top soil and mulch was shown as 3.42 acres on the PDP, the area for storage of agricultural products was 0.77 acres and the area for equipment storage was 2.05 acres, for a total of 6.25 acres. Mr. Clements testified that the proposed contractor's office would be limited to this aforementioned 6.25 acre area.

3. Mr. Clements testified that he had been operating his business on the subject property for over 50 years and that none of his neighbors opposed the petition.

4. The Board notes that none of the facts related to the criteria of Section 117.1B of the Zoning Regulations with respect to the subject property have changed since the Zoning Board granted rezoning and approved the PDP in ZB Case 1063M.

5. The Board notes that all of the uses proposed to be added to the PDP are uses permitted as a matter of right in the BR District, including “contractor’s office and indoor or outdoor storage facility, provided that the maximum lot size for such use shall be ten acres”.

#### CONCLUSIONS OF LAW

1. The subject property was already rezoned in ZB case 1063M so the Board will not revisit the issues related to rezoning of the property including compatibility in terms of the appropriateness of a BR District at this location. In addition, the Board need not address the criteria of Section 117.1G.3.b. of the Zoning Regulations because none of the facts related to Section 117.1B have changed with respect to the subject property. For the same reasons the Board need not address the criteria of Section 117.1G.3.d. because those facts also remain the same as in ZB Case 1063M.

2. The Board is required to address how the proposed additional uses affect the remaining criteria of Section 117.1G.3, and it does so as follows:

a. The Board concludes that the proposed additional uses will accomplish the purposes of the BR District. One of the purposes of the BR District is “to allow the development of businesses which will support the agricultural industry, serve the needs of the rural residential and farming communities, and provide opportunity for a

combination of business and industrial uses not otherwise permitted in the rural areas of the County". The proposed uses will accomplish these goals. The Board also concludes that the proposed additional uses, which the Petitioner has been operating on the property for 50 years without noted problems, would be compatible with neighboring land uses;

b. The Board concludes that the roads providing access to the site, MD 27, are appropriate for serving the business-related traffic generated by the additional uses proposed; and

c. The Board concludes that the densely wooded buffers along the subject property's boundaries provide an adequate buffering of the proposed additional uses on the PDP from land uses in the vicinity.

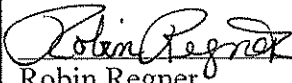
3. The Board concludes that, with respect to the proposed contractor's office use, this use is not required to be located on a separate lot, subdivided from the rest of the subject property pursuant to Section 117.1C.8. and 103A.88 of the Zoning Regulations. In reaching this conclusion, the Board notes that the bulk regulations of the BR District do not contain a maximum lot size for the contractor's office use and the Board cannot determine any rationale for requiring a separate lot for a contractor's office use in the BR District when used in a combination of BR uses on a property as is proposed in this case. The Board notes that this provision could be reasonably interpreted as requiring that the maximum lot size for a contractor's office use is ten acres when that is the only use proposed as part of a BR District PDP. That is not the situation involved in this case, however. The Board concludes that requiring a contractor's office use area to be no larger than 10 acres is reasonable and concludes that Petitioner has met this standard by

indicating the contractor's office and related storage uses would be confined to the 6.25-acre area on the PDP as noted in Finding of Fact 2.

For the foregoing reasons, the Zoning Board of Howard County on this 6<sup>th</sup> day of March, 2008 hereby **GRANTS** the Petitioner's request for approval of the proposed amended PDP for the BR-zoned subject property so as to add the additional uses in the locations noted on the PDP.


ATTEST:

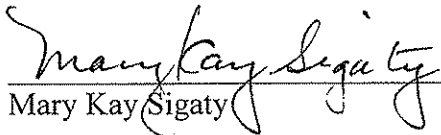
ZONING BOARD OF HOWARD COUNTY

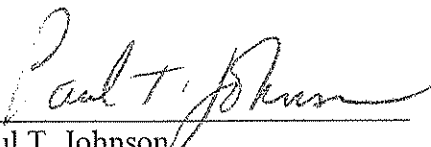
  
Robin Regner  
Administrative Assistant


  
Jennifer Terrasa, Chairperson

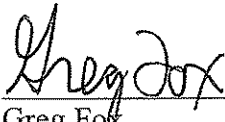
PREPARED BY HOWARD COUNTY  
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